Supreme Court, U.S.
FILED
MAY 9 2000
CLERK

No. 99-1568

In The

Supreme Court of the United States

RANDY BRITTON,

Petitioner,

vs.

PATRICK J. MALONEY, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS POLICE OFFICER OF THE CITY OF BOSTON,

Respondent.

On Petition for a Writ of Certiorari
To the United States Court of Appeals for the First Circuit

REPLY TO BRIEF IN OPPOSITION

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I. MALONEY HAS NO BASIS FOR OBJECTING TO THE QUESTIONS PRESENTED IN MY PETITION

At Page i of his opposing brief, Maloney states no basis for objecting to all of the questions presented. The questions presented are clearly "based on what occurred in the proceedings below." Maloney's overbroad, unsupported objection is frivolous; therefore, his right to object is waived.

II. MALONEY FALSELY ACCUSES ME OF MISSTATING THE RECORD

At page 1 of his opposing brief, in a most conclusory fashion, without citing a single instance of an alleged misstatement, Maloney claims that I misstated the record when I recited a more favorable statement of the case than the First Circuit did. Maloney's misrepresentation has caused me to reprint the portions of the trial transcript I cited at pages 4-11 of my petition plus surrounding text for context purposes, so that the Court can see for itself that there was no misstatement on my part.

Excerpts from the first four days of trial are in Appendices A through D, respectively. The page number references to Maloney's Appendix filed in the First Circuit, which I used in my petition, as well as the Day and Page number references of the actual transcripts have been presented at the top of each transcript page. See App. A, page 1a to App. D2, page 61a. Line numbers are also preserved and presented. Key testimony from (1) Respondent Maloney, (2) Maloney's Partner, Detective Dooley, (3) alleged assault victim Stampley, (4) the Desk Police Officer Springer -Glenn, and (5) myself is presented. See the break down in the Table of Appendices at page iii.

There are, however, two minor miscitations to Maloney's Appendix in my petition. On page 4 of my petition, three lines from the bottom of the page, the citation to Maloney's Appendix at **818**:22-23 should read Maloney's Appendix at

813:22-23; 379:16-18. The first citation on page 9 of my petition should read Maloney's Appendix at 595:25 to 596:11 and not 595:25 to **595**:11). If these innocuous miscitations are the misstatements of the record I am falsely accused of making, then Maloney's counsel continues to violate their Fed. R. Civ. P. 11 obligations, just as they did in the District Court. *Britton v. Maloney*, 981 F. Supp. 25, 45 (D. Mass. 1997)("The claim is wholly without merit. Either counsel was not paying attention, or makes arguments without regard to what Rule 11, Fed. R. Civ. P. describes as a 'belief formed after reasonable inquiry [that] it is well grounded in fact'"); Petition App. B., Petition page 61a.

III. IN FURTHER VIOLATION OF FED. R. CIV. P. 11, MALONEY MAKES A NUMBER OF ACCUSATIONS AND CLAIMS, NONE OF WHICH ARE SUPPORTED BY THE RECORD

At page 3 of his opposing brief, Maloney writes

> Petitioner does not and cannot contend that the decision in the First Circuit has created a split of authority among the federal courts or between the federal and state courts.

This is not true. At pages 17-18 of my petition, I pointed out that the First Circuit's opinion that requires an arrest to make out a federal malicious prosecution claim is in conflict with the Third Circuit's precedent, under which a federal malicious prosecution claim is made out if a state malicious prosecution claim is made out.[1] In the clearest possible terms, I added that "[t]he First Circuit rejected that view." In fact, the Third Circuit has cited the portion of the District Court's opinion that only required a sum-

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[1]*See, e.g., Lee v. Mihalich*, 847 F.2d 66, 70 (1988) ("[T]he elements of liability for the constitutional tort of malicious prosecution under § 1983 coincide with those of the common law tort"). State malicious prosecution claims do not require an arrest.

mons to effect a seizure with approval, *Gallo v. City of Philadelphia*, 161 F.3d 217, 224 (3rd Cir. 1998), while the First Circuit has reversed it. This is a clear conflict between the First and the Third Circuits.

At page 22-23 of my petition, I state that the First Circuit's opinion conflicts with this Court's holding in *Albright v. Oliver, 510 U.S. 266, 271, 114 S. Ct. 807, 812 (1994)* (plurality opinion)("his surrender to the State's show of authority constituted a seizure for purposes of the Fourth Amendment"), and with the Sixth Circuit's holdings in *Bacon v. Patera*, 772 F.2d 259, 265 (6th Cir. 1985)("[a]lthough Bacon was never arrested," he was summoned to court five times, so "[t]he record in this case could support a jury finding that Bacon had been seized without probable cause, and we thus find that Bacon stated a substantive fourth amendment claim under section 1983."). The First Circuit's Opinion also conflicts with the Sixth Circuit's holding in *DePiero v. City of Macedonia*, 180 F.3d 770, 789 (6th Cir. 1999)(seized if one "voluntarily respond[s] to a summons or arrest warrant" and is released on bond).

The First Circuit distinguished my case from *DePiero* by stating that release on bond is a necessary element before a seizure can occur. While the *DePiero* panel did make that distinction, neither of the cases relied upon by the *DePiero* Panel, *Albright* and *Bacon*, held that release on bond was a necessary element to either *Albright's* or *Bacon's* holding that voluntary submission to a criminal summons or an arrest warrant, without more, constitutes a seizure.

Maloney's false accusation that I failed to "contend that the decision in the First Circuit has created a split of authority among the federal courts" is a clear Rule 11 violation.[2]

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[2] After Maloney's lead counsel in the District Court was removed from this case in the wake of his Rule 11 violations, McCarthy moved from

At page 8 of his opposing brief, Maloney misinterprets and misrepresents this Court's holding in *U.S. v. Dionisio*, 410 U.S. 1, 9, 93 S. Ct. 764, 769 (1973) for the erroneous proposition that a criminal summons is more like a civil subpoena than an arrest warrant or a physical arrest because only an arrest "results in a record involving social stigma." At page 139a and 140a of the appendix to my petition are copies of my criminal record[3] that resulted from Maloney's false accusations. Clearly a criminal summons can cause a criminal record to be generated, with the attendant social stigma. A criminal summons also differs from a civil subpoena in that a criminal summons's return date cannot be rescheduled to a more convenient time.

At page 6 of his opposing brief, Maloney writes

> Nor did Britton at any time use the words "First Amendment" or Equal Protection" in the District Court Proceedings."

This is both false and irrelevant. It is false because I used the words "First Amendment" in my Opposition to Maloney's Judgment as a Matter of Law which was filed in the District Court. *See* an excerpt where the words are used at Petition App. H, Petition page 104a. Maloney's accusation is also false because I used the words "Equal Protection" in both my Opposition to Maloney's Judg-

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second to first chair. Andrea W. McCarthy (DOB June 27, 1964) and Merita A. Hopkins (DOB January 16, 1954) were or will be admitted to the bar of this Court, for the first time, as of May 12, 2000 and April 3, 2000, respectively. They have already impugned their Supreme Court oaths "to conduct [themselves] uprightly and according to law" with their ill-conceived attacks on my integrity, falsely accusing me of misstating the record before this Court.

[3] Upon proof that Maloney lied, including an affidavit from alleged victim Stampley, a Judge in the Boston Municipal Court sealed the record.

ment as a Matter of Law (Petition App. H, Petition page 105a) and in my Amended Complaint at paragraphs 167 and 178iii. (App. F, pages 74a and 75a).

This entire line of argument is irrelevant because I used the words "redress in the courts" in paragraphs 124, 154, 178ii, and 193 of my Amended Complaint (App. F, pages 67a, 74a, and 75a). These words invoke the First Amendment. I used the word "retaliation" in the first sentence of my opening statement to the jury. App. A, page 2a. The word "retaliation" also invokes the First Amendment when protected speech prompts the retaliation. *Crawford-El v. Britton*, 523 U.S. 574, 118 S. Ct. 1584, 1594 (1998)("the general rule has long been clearly established . . . the First Amendment bars retaliation for protected speech.") Even the jury instructions were premised on retaliation for protected speech. Petition App. L., Petition page 125a ("he must prove that the prosecution was unlawfully motivated, that the officer's intent was to retaliate against Mr. Britton for his threats to enforce his Fourth Amendment rights."). This is a clear First Amendment retaliation case involving protected speech. *Britton v. Maloney*, 981 F. Supp. 25, 37 (D. Mass. 1997); Petition App. B, page 43a.

The Courts have never required a litigant, especially a Pro Se litigant, to state the legal theory he is pursuing with specificity. *Cleaves v. City of Chicago*, 21 F.Supp.2d 858, 860(N.D. Ill. 1998)("The complaint need not specify the correct legal theory, nor point to the correct statute . . . .") However, an appellate court must apply the correct legal theory to the facts of the case to reach a just result, regardless of what the litigants think the relevant law is. *Rakovich v. Wade*, 850 F.2d 1180, 1204 (7th Cir. 1988)("this is a legal question reviewed de novo by the appellate court, requiring our application of the correct legal theory.")

Maloney also makes this same irrelevant argument by claiming that the word "bond" was not used in Trial Exhibit 3, Petition App. O, Petition page 139a. While I agree

that the word "bond" does not appear in Trial Exhibit 3, it is also clear that the words "own recog" do appear. Because I was released on my own recognizance, Mass. Gen. L. ch. 276, § 65 (1990) requires that I "not depart without leave." My release on my own recognizance is not a fact question to be proved at trial, so it is not required to be in the record. However, the fact that I was released on my own recognizance after being arraigned on August 3, 1990 is documented in the record at Trial Exhibit 3. Petition page 10, Petition App. O., page 139a. My release on my own recognizance is a legal consequence of my being wrongfully summoned to Court for arraignment on false charges Maloney created out of whole cloth, a fact that the jury's verdict places beyond dispute. This Court can take judicial notice that when a citizen is summoned to Court and arraigned on felony criminal charges, he is released on his own recognizance, if bail or bond is nether required nor denied. *Carson v. City of Fort Lauderdale*, 293 F.2d 337, 339 (5th Cir. 1961)("Federal Courts are required to take judicial notice of state laws.")

However, the Courts do not have to raise or consider arguments that are not timely presented by the parties. To take advantage of this rule, Maloney misrepresents *when* I first made my argument that a warrant was authorized for my arrest before I was arraigned in Court. Maloney also misrepresents *when* I first made my "bond" arguments. As shown below, all of my arguments were timely made.

At page 11 of his opposing brief, he claims that the Supreme Court is the first time I raised the "warrant" argument. But this argument was made in the First Circuit, at least by the time of my first petition for rehearing. The "bond" argument was *first* made at pages 10 and 26-27 of my opposing brief filed in the First Circuit, not in my petition for rehearing. Even though the First Circuit misapprehends the factual record as to when the bond argument was made, it does not give Maloney's attorney li-

cense to repeat those misapprehensions to this Court, as though they were fact. Maloney should rely on and cite to the underlying record, not to the inaccurate summaries of that record, even if the First Circuit wrote the inaccurate summary.

Because of the First Circuit's misapprehension of the essential facts, I filed *two* petitions for rehearing.

IV. THE DISTRICT COURT REJECTED MALONEY'S ARGUMENT THAT I DID NOT PREVAIL ON MY STATE LAW CLAIMS

In an October 3, 1997 Memorandum and Order, App. E, the District Court rejected Maloney's argument that I did not prevail on my state law claims. App E., page 63a.

Both the District Court and the parties agreed that my damages were the same under all of the legal theories submitted to the jury. Accordingly, the District Court crafted jury instructions and structured a verdict slip, without objection, that insured that only one number would be provided for all of my damages; "the damages were not segregated as between the federal and state claims." October 3, 1997 Memorandum and Order, App. E., page 63a.

The error made by the First Circuit and repeated by Maloney's Counsel is that they should focus on the extent of my damages and not on the legal theory under which my damages arise. All of my successful legal theories, federal malicious prosecution, state malicious prosecution, state civil rights violation, and state abuse of process are supported by and premised on the same underlying facts: Maloney filed baseless criminal charges against me in retaliation for protected speech. Maloney gave me a false felony criminal record for something I did not do. See alleged victim Stampley's unequivocal testimony at App. C1, page 33a line 19 to page 35a line 4.

My damages were limited to emotional distress damages, and clearly I did not suffer a different kind of emotional distress damages under the federal theory than I did under the state theory. The District Court Agrees. *Britton v. Maloney*, 981 F. Supp. 25, 56 (D. Mass. 1997)("Clearly, the plaintiff did not suffer a different kind of mental distress under the state claims than under the federal civil rights claim"); Petition App. B., page 90a.

V. FOR FOURTH AMENDMENT PURPOSES, A SEIZURE IS COMPLETE UPON A SHOW OF AUTHORITY FOLLOWED BY SUBMISSION TO THAT AUTHORITY

The District Court cited and relied upon this Court's holding in *Albright* that a voluntary surrender to an arrest warrant constitutes a seizure. Petition App. B., page 37a. Although Maloney and the First Circuit argues that there is a difference when one surrenders to an arrest warrant as opposed to a summons, there is no difference. In *DePiero*, the Sixth Circuit recognized that there was no difference between an arrest warrant and a summons when one "voluntarily respond[s] to a summons or arrest warrant, answer[s] to the charges against him, and [i]s then released on bond in lieu of remaining incarcerated until trial." *DePiero v. City of Macedonia*, 180 F.3d 770, 789 (1999).

In fact, I argue that surrendering to a summons is more of a submission to a *direct* show of authority than is surrendering to an arrest warrant. An arrest warrant is directed to a sheriff or other law enforcement officer to "arrest" an individual. In contrast, a summons is directed to the individual using words that instruct the individual to voluntarily surrender at a certain time and place. In the case at bar, the summons directed me to report to the Boston Municipal Court (BMC) on August 3, 1990. When I traveled to the BMC and surrendered myself to the Court, as directed, I was seized. I was released by the Court on my own recognizance because I met the standards for release on my own

recognizance specified in the Massachusetts Bail Statute, Mass. Gen. L. ch. § 58 (1990).

This Court's precedents make clear that a seizure requires two elements: (1) a show of authority, and (2) a submission to that authority. I analyze each in turn, as it applies to this case.

The show of authority can be an arrest warrant as held in *Albright v. Oliver,* 510 U.S. 266, 271, 114 S. Ct. 807, 812 (1994). It can be flashing blue lights. *California v. Hodari,* 499 U.S. 621, 628, 111 S. Ct. 1547, 1552 (1991). It can be a verbal order to walk over to a police officer for questioning. All of these showings of authority are sufficient to meet the "show of authority" element. However, if an officer *approaches* an individual and asks a few questions, this is not a show of authority that can lead to a seizure. *U.S. v. Mendenhall,* 446 U.S. 544, 555, 100 S. Ct. 1870, 1877 (1980)("The respondent was not seized simply by reason of the fact that the agents approached her, asked her if she would show them her ticket and identification, and posed to her a few questions.")

Submisson to each of the above "show of authorities" is shown by stopping ones travel/movement as in the case of the blue lights when a motorist is traveling, or traveling to a court or a police station, as the case may be, when an arrest warrant or summons is issued, or walking over to a police officer, when summoned to answer questions. Yet, if the police officer approaches a stationary citizen, no seizure is effected because the police not the citizen *moved*. If the police officer approaches a walking citizen, and asks the citizen if he will answer a few questions, and the citizen stops to speak to the officer, a seizure has occurred. In all of these examples, where seizures have been held to have occurred, a citizen either begins, changes, or stops traveling/moving in response to a show of authority. A restraint on the liberty to move as one chooses is the touchtone of a seizure.

Consistent with these examples, it is clear that I was seized for purposes of the Fourth Amendment, the moment I traveled to the BMC for my arraignment and possible incarceration, depending on how favorably the results of my background check compared with the standards of the Massachusetts Bail Statute, Mass. Gen. L. ch. 276, § 58 (1990).

The biggest mistake made by both Maloney and the First Circuit is that they assume that a common-law arrest defines the limits of the term seizure for Fourth Amendment purposes. In short they argue, no arrest means no seizure. But this Court "unequivocally reject[s] the notion that the common law of arrest defines the limits of the term 'seizure' in the Fourth Amendment." *California v. Hodari*, 499 U.S. 621, 627 n. 3, 111 S. Ct. 1547, 1551 n. 3 (1991).

CONCLUSION

The court should grant my petition for a writ of certiorari to set forth the correct rule of law: surrender on a summons, just like surrender on an arrest warrant, constitutes a seizure, without more.

Nothing in Maloney's Brief in Opposition has merit. It is riddled with misstatements and irrelevant arguments. It should not give this Court any pause when it decides to grant certiorari in this case to answer the many legal questions presented in my petition.

Respectfully submitted,

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Dated: May 9, 2000

APPENDIX

Maloney's Appendix Page 377

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS

Civil Action No. 93-11430-NG.

RANDY BRITTON,

Plaintiff,

v.

PATRICK J. MALONEY,

Defendant.

BEFORE THE HONORABLE NANCY GERTNER
UNITED STATES DISTRICT JUDGE
DAY ONE
JURY TRIAL

APPEARANCES

RANDY BRITTON, PRO SE
for the plaintiffs
By: Randy Britton, Pro Se

CITY OF BOSTON LAW DEPARTMENT
For the defendants
By: Robert J. Boyle, Jr., Esq.
Andrea W. McCarthy, Esq.

Courtroom No. 4
USPO & Courthouse
Boston, Massachusetts 02109
February 3,1997
9:45 a.m.

Carol L. Scott, CSR, RPR, CM
Official Court Reporter
Boston, Massachusetts 02109

Maloney's Appendix Page 379
Britton's Opening Statement – Day 1, Page 3

(Excerpt from proceedings on February 3,1997.)
MR. BRITTON: Thank you.
Ladies and gentlemen of the jury, this is a case about egregious police misconduct, police coverup and the retaliation.
You have to ask yourself who polices the police? Who protects us when those who have been sworn to protect us fail to do so?

She then got on the phone. She says that she pushed an emergency button and I assumed that somebody was going to come down shortly and help me out. And shortly someone did.

Maloney's Appendix Page 380
Britton's Opening Statement – Day 1, Page 4

I asked him why are you keeping my rifle if I'm lawfully entitled to have it. He says, well, I'm not real sure if it's a legal weapon. I've got the FID card which entitles you to have a rifle; but if it's not a rifle and it's, in fact, a pistol or a firearm, you need a pistol permit, which I didn't have. So he said we'll send it down to ballistics. Ballistics will make a determination whether it's a rifle or not. And if it's a rifle, in a couple of days you can go pick it up.

Prior to leaving I says, well, nowhere on this police

Maloney's Appendix Page 381
Britton's Opening Statement – Day 1, Page 5

report does it say you have my rifle. So then he wrote on there "rifle held for safekeeping," (Indicating) right here. I says, well, anyone could have written that, would you initial it or sign it. Then he initialed it. Then I left. I took my daughter, got in my car and then I went home. And as I reflected on the situation, I got kind of upset. I said I'm lawfully in possession of my rifle. I am doing what I am supposed to be doing. And the police have violated my rights. They have seized my rifle.

So I called back down there. And I talked to the sergeant in charge. And I said, I hope I'm not going to have to sue you to get my rifle back. And he says, Well, I'm not giving your rifle back. It's going to go to ballistics and just like I told you, in a couple days you can go get it from ballistics. Nothing changed.

Maloney's Appendix Page 390
Maloney's Opening Statement – Day 1, Page 14

Mr. Britton went up the stairs, rifle in one hand, daughter in the other, into Boston Police headquarters.

Maloney's Appendix Page 391
Dooley's Direct Questioning by Britton – Day 1, Page 15

EDWARD JAMES DOOLEY, III, Sworn
DIRECT EXAMINATION
BY MR. BRITTON:
Q. How are you doing today, Mr. Dooley?
A. Good.
Q. Good.
Could you state your full name for the record?
A. My full name is Edward James Dooley, III.

Maloney's Appendix Page 395
Dooley's Direct Questioning by Britton – Day 1, Page 19

Q. But in any case you know what an AR-7 rifle looks like?
A. I do.
Q. And on June 30 of 1990 there was no doubt in your mind that the rifle I had in my possession was an AR-7 rifle; correct?
A. No, the -- I wouldn't say I knew exactly what it was that night. It's -- I had seen that rifle maybe once, twice in my lifetime. I was more concerned of alleviating the rifle from your hand.
MR. BRITTON: Objection, not responsive.
THE COURT: Rephrase the question.
MR. BRITTON: I think he's already answered it, Your Honor.
THE COURT: All right. Go on.

Maloney's Appendix Page 398
Dooley's Direct Questioning by Britton – Day 1, Page 22

THE COURT: Yes, read the whole paragraph.
A JUROR: Objection. Can I ask Mr. Britton to speak up?
THE COURT: Yes. Mr. Britton, keep your voice up.
Can you read paragraph27 to the jury as loud as is reasonable.
MR. BRITTON: Yes, Your Honor. Paragraph27 says, "Sitting at the desk was Officer Brenda Springer, an unarmed black female. I told her that I was being chased by some people outside. She got on the phone and I assumed she called for assistance. Within minutes Detective Dooley came down from upstairs. And I told him that the people in the red car outside were trying to kill me. He took my rifle from me. I was reluctant to give it to him but I had to either let go or fight over it. He went outside and Loughlin got out of the car and talked to Dooley. I watched from the front steps of police headquarters."
Those are the allegations in my complaint.

Maloney's Appendix Page 403
Dooley's Direct Questioning by Britton – Day 1, Page 27

Q. And if there is doubt, then what time do you think it occurred?
A. I couldn't really tell you an exact time. What I could tell you is that I do know that I came to work early. My hours are 5:30 to one so that time reflected on there says 5:20 so apparently I did come into work early. The time span from trying to get the rifle out of your hand, which you wouldn't give up, the time span of Sergeant Detective Maloney coming up the stairs, we're talking to you, I believe you went upstairs, I can't tell you if it was -- what time they arrived. Five minutes later, ten minutes later, fifteen minutes later, even a half hour. But I do know that from meeting you, trying to determine what happened, I did speak to a male and a female across the street.

Maloney's Appendix Page 423

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS

Civil Action No. 93-11430-NG.

RANDY BRITTON,

Plaintiff,

v.

PATRICK J. MALONEY,

Defendant.

BEFORE THE HONORABLE NANCY GERTNER
UNITED STATES DISTRICT JUDGE
DAY TWO
JURY TRIAL

APPEARANCES

RANDY BRITTON, PRO SE
for the plaintiffs
By: Randy Britton, Pro Se

CITY OF BOSTON LAW DEPARTMENT
For the defendants
By: Robert J. Boyle, Jr., Esq.
Andrea W. McCarthy, Esq.

Courtroom No. 4
USPO & Courthouse
Boston, Massachusetts 02109
February 4,1997
9:10 a.m.

Carol L. Scott, CSR, RPR, CM
Official Court Reporter
Boston, Massachusetts 02109

Maloney's Appendix Page 436
Dooley's Direct Questioning by Britton – Day 2, Page 14

Officer Dooley, resume the stand.
EDWARD JAMES DOOLEY, III, Resumed
THE CLERK: Officer Dooley, I just remind you that you're still under oath.
THE WITNESS: Okay.
MR. BRITTON: Your Honor, may I proceed?
THE COURT: Yes, you may.
DIRECT EXAMINATION, (Cont'd.)
BY MR. BRITTON:
Q. Good morning, Mr. Dooley.
A. Good morning.
Q. Did you have a good night's rest?
A. I did.
Q. That's good.

Maloney's Appendix Page 440
Dooley's Direct Questioning by Britton – Day 2, Page 18

Q. Well, at 5:20 p.m. you see me standing in the hallway with the rifle. And you have testified that occurred; correct?
A. Correct.
Q. What happened next?
A. After I observed you standing in the hallway with the rifle, I put the coffees down on the stairs. There's two hallways. And I went directly toward you, grabbed the barrel of the weapon, placed it towards the floor. I had my badge out. I asked you to give up the weapon and you didn't.
Q. And how were you dressed at the time?
A. Civilian clothes. I don't recall what I was wearing.
Q. And did you tell me to freeze?
A. Not that I recall.
Q. Did you pull your service revolver?
A. No.

Maloney's Appendix Page 441
Dooley's Direct Questioning by Britton – Day 2, Page 19

Q. So you saw me in the hallway with the rifle. And the first thing you did was put the coffee down and the second thing you did was pull your badge out; is that correct?
A. Correct.
Q. And did you identify yourself as a police officer?
A. I, verbally, yes. Also I displayed the badge, which would have identified me as a police officer.
Q. Now, prior to touching the barrel of the rifle, had you said anything to me?
A. No.

Maloney's Appendix Page 444
Dooley's Direct Questioning by Britton – Day 2, Page 22

Q. All right. Now, at 5:20 I'm standing in the hallway with
the rifle; correct?
A. Correct.
Q. How long did it take you to put the coffee down, take your
badge out and grab the barrel?
A. I don't know.
Q. A minute, 30 seconds?
A. Just as long as it took to put the coffee down and get up
the stairs. I didn't look at my watch.
Q. But we are talking a very short period of time?
A. Correct.
Q. And now you're saying Maloney is present?
A. Yes.
Q. Within minutes of 5:20 p.m.?
A. Yes.

Maloney's Appendix Page 449
Dooley's Direct Questioning by Britton – Day 2, Page 27

Q. Now, at some point between 5:20 and 6:15 did you talk to
Stampley and Carpenter?
A. Yes.
Q. And about where did that occur?
A. If, again, you're looking for me to say 5:18, I can't tell you that. But there was a point in time that I believe you had left -- I may be wrong. There was some conversation about the two suspects were outside. And I was told -- as a matter of fact, I may have even gone outside with Sergeant Maloney and they were parked across the street.
Q. So you went outside with Sergeant Maloney prior to 6:15?
A. I'm just guessing. Like I said, this happened in 1990.
Q. Well, when you talked to Stampley and Carpenter, was Sergeant Maloney with you?
A. I believe he was.
Q. Well, did you talk to them alone?
A. Stampley and Carpenter?

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Dooley's Direct Questioning by Britton – Day 2, Page 28

Q. Right.
A. No.
Q. So it had to be Maloney that was with you; is that correct?
A. I'm just, like I say, this happened in1990. Going back in memory, I believe he was.
Q. All right. Well, if it wasn't Sergeant Maloney that was with you, who else could it have been?
A. Another member of the squad but I don't recall.

THE COURT: All right. Now, at this point, Mr. Britton, you're going to read paragraph 54 of your complaint and Officer Dooley's answer; is that right?
MR. BRITTON: Yes, Your Honor.
THE COURT: Officer Dooley is bound by his answer to the complaint. It is the opening document which, in which the parties will admit to certain facts or deny certain facts. And so he's bound by what he has admitted to in his answer.
Go on, sir.
MR. BRITTON: Paragraph 54 of my complaint states, "It's important to highlight Maloney's false claims. According to Maloney, both Stampley and Loughlin told Dooley

Maloney's Appendix Page 451
Dooley's Direct Questioning by Britton – Day 2, Page 29

and Maloney on 30 June1990 that I had assaulted Stampley and Loughlin. But the fact is Maloney never talked to Stampley and Loughlin on 30 June1990. Maloney was upstairs with me at all times. Only Dooley talked to Stampley and Loughlin on 30 June1990. See the certified true copy of the Maloney/Donohoe incident report at Exhibit 8 which is incorporated by reference. Also read the two applications for a complaint and the complaint itself which are at Exhibit 9, which are incorporated herein by reference."

And paragraph 54 of Dooley's answer states,

"Defendant Edward J. Dooley denies so much of the allegations of paragraph 54 as may be alleged --" I'm sorry. I misspoke. Let me start again.

"Defendant Edward J. Dooley denies so much of the allegations of paragraph 54 as may be determined to allege that he spoke to Stampley and Loughlin alone. Defendant Edward J. Dooley further states that he and Patrick J. Maloney both interviewed Stampley and Loughlin on June 30 of1990. Defendant Edward J. Dooley does not answer the remaining allegations of paragraph 54 as they did not state a claim against him."

Maloney's Appendix Page 455
Dooley's Direct Questioning by Britton – Day 2, Page 33

Q. Who made the decision to keep the rifle after the initial seizure?
A. After the initial seizure?
Q. Right.
A. Meaning that, taking the rifle from your hand?
Q. Right. Within minutes of 5:20 the rifle was taken from me; correct?
A. Correct.
Q. Down here at 6:15 when I'm ready to leave, I don't get my rifle back; correct?
A. Correct.
Q. Who made that decision?
A. We all did.
Q. And was part of your reason for making that decision that you thought the weapon was an illegal firearm?

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Dooley's Direct Questioning by Britton – Day 2, Page 34

A. That was one of the reasons, yes.

Q. But you knew it was a rifle?
A. Yes.
Q. And you knew I had an FID card?
A. Yes.
Q. In fact, you took a picture of it, of my FID card; correct?
A. Photostat, yes.
Q. So you knew I was properly licensed and you knew the license was for the rifle?
A. You had an FID card. That gives you the privilege to purchase a rifle, pistol, shotgun, to keep it in your home or at your place of business.
Q. Well, I wasn't in my place of business in police headquarters; was I?
A. No.
Q. So was I illegal to be there?
A. I'd say yes, you were.
Q. So based on your understanding of the law, if I have an FID card and I had a weapon that you know for a fact is a rifle, because I'm not in my home, I'm in violation of the

Maloney's Appendix Page 457
Dooley's Direct Questioning by Britton – Day 2, Page 35

law?
A. Yes.
Q. And that was a factor in your deciding to keep the rifle
at 6:15?
A. One of the factors, yes.
Q. And you were one of the decision makers in determining to
keep the rifle?
A. Yes.
Q. Did the fact that the rifle that I had -- did the fact that there was no stock on it confuse you at all about whether
it was a rifle?
A. No.

Maloney's Appendix Page 461
Dooley's Direct Questioning by Britton – Day 2, Page 39

Q. All right. At 5:20 p.m. in the hallway when you took the rifle from me, did I willingly give it up to you?
A. Not at first, no.
Q. So you had to use some force to get it; correct?
A. It wasn't a major struggle. It was -- I had one hand on

Maloney's Appendix Page 462
Dooley's Direct Questioning by Britton – Day 2, Page 40

the barrel. The other hand I was trying to pry your fingers
off the receiver.

Maloney's Appendix Page 471
Dooley's Direct Questioning by Britton – Day 2, Page 49

Q. All right. And that's an official document from the ballistics unit?
A. It appears to be.
Q. All right. Now, on this form Exhibit11, which I described as a 2419, there is a question on there about charges pertaining to ballistics evidence; correct?
A. Correct.
Q. And what did you write?
A. Illegal possession of firearm.
Q. And that is on July 5,1990; correct?
A. Apparently, yes.
THE COURT: What is that document, sir?
(Document handed to the Court.)
The witness is reading from a Boston Ballistics Unit report; is that right?
MR. BRITTON: Yes, ma'am.
THE COURT: Okay.

Maloney's Appendix Page 496
Dooley's Direct Questioning by Britton – Day 2, Page 74

complaint and paragraph 61 of his answer?
THE COURT: All right.
MR. BOYLE: May I have a moment, Your Honor?
THE COURT: Yes, of course.
(Pause in proceedings.)
THE COURT: Are you ready, Mr. Boyle?
MR. BOYLE: Thank you, Your Honor.
THE COURT: Okay. Go on, sir.
MR. BRITTON: Paragraph 61 of my complaint says, "The original police report signed by Dooley should have mentioned the alleged assault charges if Dooley knew of the assault charges as Maloney claims. But it did not because there were no assault charges on 30 June1990. The charges were thought up after the fact when it appeared to Maloney that I was not going to take his guff lying down." The defendant's response, "Defendant Edward J. Dooley denies the allegations of paragraph 61 and further states that the charges made by Stampley and Loughlin against the plaintiff were communicated to Detective Edward J. Dooley after the initial incident report was completed. Therefore, the charges were recorded on a supplemental incident report."

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Maloney's Direct Questioning by Britton – Day 2, Page 75

THE COURT: Next witness, Mr. Britton.
MR. BRITTON: Your Honor, I call Detective Maloney.
THE COURT: Detective Maloney, please take the stand.
PATRICK J. MALONEY, Sworn
DIRECT EXAMINATION
BY MR. BRITTON:
Q. Good morning, Mr. Maloney.
A. Good morning.
Q. Could you state your name for the record?
A. Patrick J. Maloney.

Maloney's Appendix Page 499
Maloney's Direct Questioning by B.:tton – Day 2, Page 77

hallway at 5:20 p.m. on June 30,1990?
A. I was, yes, sir.
Q. And what did you see at that time?
A. Well, I was coming to work that afternoon, early evening.
And as I entered the lobby headquarters, I saw Officer Dooley
struggling with you. You had a rifle in your hand. And
Officer Dooley was trying to wrest it away from you, you were
resisting. Dooley yelled to me, "He's got a gun."
As I approached you you said, "I've got an FID card
and it's unloaded."
Q. And I said that to you before I let go of the rifle?
A. You did, yes, sir.
Q. So you knew at the very outset, within minutes of this
incident occurring, that the rifle was both unloaded and I had
a proper license; correct?
A. I didn't know that, no, sir.
Q. When did you know that?
A. Which?
Q. That I had an FID card.
A. Well, we first, upon relieving you of the rifle, it was
cleared either by myself or Dooley, I'm not sure which. And
we determined it was unloa[illegible], as you stated. Then at some
point, upon talking to you and you produced an FID card, which
appeared to be valid.

Maloney's Appendix Page 501
Maloney's Direct Questioning by Britton – Day 2, Page 79

Q. All right. And about how many minutes after you first came into that situation did you suggest that we go upstairs?
A. Oh, perhaps two minutes.
Q. I am going to put in red what you're saying to differentiate from the black that Mr. -- Detective Dooley talked about.
So we're upstairs within minutes of this thing scurrying?
A. Yes, sir.

Q. And when you say "we go upstairs," who's "we"?
A. The three of us.
Q. And that would be Britton, Maloney and Dooley?
A. Correct.
Q. All right. And how long am I upstairs?
A. It's a good deal of time, half an hour or so.
Q. And are you upstairs with me the entire time?
A. I was, yes, sir.
Q. All right. And at some point Detective Dooley wrote a police report; correct?

Maloney's Appendix Page 502
Maloney's Direct Questioning by Britton – Day 2, Page 80

A. Yes, sir.
Q. And that police report is Joint Exhibit1 which you have before you; correct?
A. This is it, yes, sir.
Q. And did you approve Detective Dooley giving me that police report?
A. I did, yes, sir. I asked him to or I told him to.
Q. All right. And at the time that you asked him to give me that police report, you were still upstairs; correct?
A. This is correct, yes, sir.
Q. In fact, you hadn't been downstairs at all; correct?
A. From the initial time with you, no, I have not.

Maloney's Appendix Page 518
Maloney's Direct Questioning by Britton – Day 2, Page 96

Q. All right.
How long is lengthy?
A. Somewhere between 5:20 when I first encountered you and the time you left the station, okay. The time that report was completed was 6:15. Actually Dooley has the time as 6:15 completed and then he writes this rifle held for safe-keeping at your request, so sometime presumably after, so sometime between now and then a decision was made by me not to return your rifle at that time.
Q. All right.
A. It didn't mean you couldn't get it back at some other point in time by going through the department procedures.
Q. And what were those departmental procedures?
A. It was my understanding that once a gun is confiscated, seized by the police, submitted to the ballistician that the process would go on. A request is made by the owner for the return of that weapon. It goes, my understanding, it goes to the police commissioner who has the final say.
MR. BOYLE: I request a limiting instruction on that, Your Honor. It goes to state of mind.
THE COURT: I'm sorry.
MR. BOYLE: I request a limiting instruction on that. It goes -- it's offered for state of mind.

Maloney's Appendix Page 522
Maloney's Direct Questioning by Britton – Day 2, Page 100

paragraph 44 of my complaint. "As was my policy at the time,
I took steps to report the abusive situation. First I called
the sergeant in charge of operations that night, Sergeant
Norman Connor. Connor gave me the drug control unit's phone
number. I called and Maloney answered the phone. I told him
that he had illegally seized my rifle in violation of the
Fourth Amendment and that I hoped I wasn't going to have to
sue him to get my rifle back. The call was recorded, as most
police lines are recorded. Maloney never said that he was
justified in taking the weapon because he was investigating
felony charges. We ended up very angry at each other.
Maloney didn't budge."
In response to paragraph 44, "Defendant Patrick J.
Maloney admits receiving a phone call from the plaintiff.
Defendant Patrick J. Maloney is without knowledge or
information sufficient to form a belief as to the truth of the
remaining averments contained in paragraph 44."

Q. Okay. Do you recall having -- rephrase.
Isn't it true that on July 3,1990, I went to police
headquarters to complain against you to Deputy Superintendent
Wood?
A. If you say so.

Maloney's Appendix Page 525
Maloney's Direct Questioning by Britton – Day 2, Page 103

Q. The decision to keep my rifle was made by you before you talked to Stampley and Loughlin; correct?
A. Yes, sir.
Q. So allegations of assault had nothing to do with your decision to keep the rifle; correct?
A. This is correct. The allegations by these two individuals was not a factor in my decision.
Q. All right.
So you kept the rifle because you were concerned that it might be an illegal firearm; correct?
A. No, sir.
Q. You kept the rifle because you didn't have a good handle on what was going on; correct?
A. This is correct.

Maloney's Appendix Page 548

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS

Civil Action No. 93-11430-NG.

RANDY BRITTON,

Plaintiff,

v.

PATRICK J. MALONEY,

Defendant.

BEFORE THE HONORABLE NANCY GERTNER
UNITED STATES DISTRICT JUDGE
DAY THREE
JURY TRIAL

APPEARANCES
RANDY BRITTON, PRO SE
for the plaintiffs
By: Randy Britton, Pro Se

CITY OF BOSTON LAW DEPARTMENT
For the defendants
By: Robert J. Boyle, Jr., Esq.
Andrea W. McCarthy, Esq.

Courtroom No. 4
USPO & Courthouse
Boston, Massachusetts 02109
February 5,1997
10:20 a.m.

Carol L. Scott, CSR, RPR, CM
Official Court Reporter
Boston, Massachusetts 02109

Maloney's Appendix Page 559
Stampley's Direct Questioning by Britton – Day 3, Page 12

TYRONE VAN STAMPLEY, Sworn
DIRECT EXAMINATION
BY MR. BRITTON:
Q. Good morning, Mr. Stampley. How you doing?
A. All right.
Q. Would you please state your name for the record?
A. Tyrone Van Stampley.
Q. I'd like to take you back to June 30,1990. Were you in a motor vehicle chasing me towards police headquarters?
A. Yes.
Q. And did I proceed to police headquarters in advance of you?
A. Yes.
Q. And did I get out of the car with my daughter and go into police headquarters?
A. Yes.
Q. And did I have a rifle with me at that time?
A. I don't recall -- I don't recall seeing any rifle, no.
Q. Did I ever point a rifle at you?
A. No.
Q. Did I ever assault you?
A. No.
Q. Did you ever tell anyone that I did?
A. No.
Q. Did you ever file any charges against me?

Maloney's Appendix Page 560
Stampley's Direct Questioning by Britton – Day 3, Page 13

A. No.
Q. Did you ever tell anyone you wanted to file charges against me?
A. No.
Q. Did you ever ask anyone to file charges against me?
A. No.
Q. I show you Joint Exhibit No.12.
MR. BOYLE: Your Honor, I don't have my list. It's with the clerk.
THE CLERK: It's the Maloney incident report.
Q. Would you take a moment and read it over.
(Witness complied.)
Q. Is this police report true or false?
A. I didn't talk to the police about you pulling a gun out or assaulting me or any type, I don't know.
MR. BRITTON: Your Honor, may I read the narrative of the paragraph?
THE COURT: Yes.
MR. BRITTON: The narrative of this police report Joint Exhibit12 states, "Additional info aforementioned, Tyrone Stampley and Tammy Carpenter stated to officers that the suspect pointed his rifle out of his auto window at the victims in a threatening manner. Allegations were made to Detective Dooley and Sergeant Maloney on June 30, 1990."

Maloney's Appendix Page 561
Stampley's Direct Questioning by Britton – Day 3, Page 14

Q. Did you hear what I just read?
A. Yes.
Q. Is that true?
A. No.
Q. Approximately how long did you talk to the police that
day?
A. Maybe five, ten minutes. But it wasn't me just talking to
them, Tammy was talking to them too so maybe five minutes. I
don't know. I can't recall.
Q. All right. Do you recall what time it was that this event
occurred on June 30 of1990?
A. Maybe like five, between five and six o'clock. I'm not
exactly sure.

Maloney's Appendix Page 564
Stampley's Cross Examination by Boyle – Day 3, Page 17

Q. And am I to understand the reason you were chasing him is
simply a case of mistaken identity, sir?
A. Yes.
Q. And the reason it's a case of mistaken identity is that --
why?
THE COURT: I don't see the relevance of this.
Go on. Go on, sir.
Q. Who did you mistake him for?
A. I mistook him for someone I had problems with in the
penitentiary so when I got out on parole I seen him, I was
going --
THE COURT: Is this information you told the
police at any point?
THE WITNESS: Yes.
THE COURT: You did tell the police. Go on.
Q. And what was this person's name?
A. I don't know his real name.
Q. And how long were you in the penitentiary with this
person?

Maloney's Appendix Page 565
Stampley's Cross Examination by Boyle – Day 3, Page 18

A. Maybe -- we were there one prison together for like six
months.
Q. Six months?
A. Yeah.
Q. And what's the person's name when you knew him for six
months?
A. We just called him Cash, I don't know his real name.
Q. Now, I thought you said you didn't speak to the police
when Mr. Britton was asking you questions?
A. I didn't say I didn't speak to the police. I said I
didn't speak to them for ten minutes. They mostly talked to
Tammy.
Q. I see. But when you spoke to the police, you explained to
them, oh, this is just a case of mistaken identity, I was
chasing somebody else that I mistook for Mr. Britton?
A. Yes.
Q. And they said, well, that's fine, you can chase anybody as
long as it's not Mr. Britton, is that the response?
A. No, they did not say that.
Q. No?
Did they ask you what your intent was when you were
chasing this other person who you mistook to be Mr. Britton?
A. No, they didn't.

Maloney's Appendix Page 571
Stampley's Cross Examination by Boyle – Day 3, Page 24

Q. So when Mr. Britton was going up the stairs, he had, what, his five-year old daughter?
A. Yes.
Q. You were chasing a man who had his five-year old daughter with him; is that right?
A. Yes.
Q. And this man who had a five-year daughter also had a rifle in his hand, is that right, as he was going up the stairs?
A. At the police station, yes.
Q. So you did see him?
A. I seen something in his hand.
MR. BOYLE: No further questions, Your Honor.
THE COURT: Any redirect, Mr. Britton?
MR. BRITTON: Yes, Your Honor.
REDIRECT EXAMINATION
BY MR. BRITTON:
Q. Now, you saw me walk into the police headquarters?
A. Yes.

Maloney's Appendix Page 573
Stampley's Re-Direct Questioning by Britton-Day 3,
Page 26

MR. BRITTON: Can I have Joint Exhibit17 back?
THE CLERK: Sure.
Q. I'd like to show you Joint Exhibit17.
That's a fairly small looking thing; isn't it?
A. I suppose. I don't know -- I don't know about guns.
Q. All right. Now, on cross you indicated you did see the
rifle as I went into police headquarters?
A. Yes.
Q. Was I carrying the rifle down at my side close to my leg
like this (Indicating)?
A. I don't recall.
Q. Well, if I was, given what the rifle looked like, isn't it
very possible that you would not have seen it?
A. It's possible.
THE COURT: Possibility is not relevant here.
Go on. Next question, Mr. Britton.
MR. BRITTON: Your Honor, can I show Exhibit17
to the jury?
THE COURT: That can be passed but you continue
your questioning.
(Photograph published to the jury.)

Maloney's Appendix Page 575
Britton's Direct Questioning by Court – Day 3, Page 28

RANDY BRITTON, Resumed
THE COURT: Go on, Mr. Britton.
MR. BRITTON: All right, Your Honor. Let's see. First thing I'd like to do --
THE COURT: You have to do this in terms of question and answer.
DIRECT EXAMINATION, (Cont'd.)
BY MR. BRITTON:
Q. Okay. Mr. Britton, can you see the board here with the time line on it?
A. Yes.
Q. Is there anything that you'd like to fix on there?

MR. BOYLE: Your Honor, if you'd like to ask the witness questions, I wouldn't object to that either, just to move it along.
THE COURT: Okay. Let's do it this way.
EXAMINATION
BY THE COURT:
Q. Let's start directing your attention to June 30,1990, Mr. Britton.
A. Right, Your Honor.

Maloney's Appendix Page 576
Britton's Direct Questioning by Court – Day 3, Page 29

Q. At some point you went to the police station; is that right?
A. Yes, Your Honor.
Q. What time was that?
A. It was approximately 5:17.
Q. 5:17. And is that something that you think is of relevance to put on the board, 5:17?
A. Yes, Your Honor.
Q. All right. Put 5:17 on the board.

Q. When you arrived at the police station, what was in your car?
A. My daughter was in my car, I was in my car, and my rifle was in my car.
Q. What did you do first when you got out of the car?
A. I opened the car door. I got out of the car. I had the barrel action portion of my rifle and I started to walk into police headquarters. I looked at my daughter and I said come on (Indicating). And she was seat belted in so I had to go back into the car and unseat belt her. And then -- she was sitting in the passenger seat. So then she and I went inside police headquarters.

Maloney's Appendix Page 577
Britton's Direct Questioning by Court – Day 3, Page 30

Q. What's the first thing that happened when you went inside police headquarters?
A. I went inside and went to the front desk. And I identified a black female that was sitting there.
Q. And then what happened?
A. I told her that there was some people outside that were chasing me and I needed some help.
Q. And what happened then?
A. She just looked at me. I noticed that she was unarmed. And shortly thereafter she got on the telephone.
Q. What happened after she got on the telephone?
A. I would say another10,20 seconds went by, nothing. And I then became concerned that the people that were chasing me might be coming in. So I left my daughter in the lobby area with the police officer, I told her to stay there. And then I went down towards the front doors of police headquarters so that I could observe what was going on outside.
Q. And then what happened?
A. I observed the car that was chasing me pass by. And then I just watched. And I didn't see anything for a while.
Q. Okay. What happened after that?
A. While standing in the headquarters in that hallway there

Maloney's Appendix Page 578
Britton's Direct Questioning by Court – Day 3, Page 31

looking out the door, I was peering out the door. I had the rifle, the barrel and the action portion of the rifle behind me. And I'm looking out like this (Indicating). And Detective Dooley appears. He comes up behind me and he grabs the rifle.

Q. Okay. What happened next?

A. I was reluctant to give it to him. I had no idea who he was. He didn't identify himself.

Q. Was he in uniform?

A. No, ma'am, he was in plain clothes.

Q. Okay.

A. He didn't say police. He didn't say freeze. He didn't draw his service revolver. He just grabbed the barrel of the rifle and proceeded to pull it from me.

Q. And then what happened?

A. I looked at him. Given the fact that he came from inside and the fact that I just asked for assistance, I assumed that he was a police officer. So then I let go.

Q. And what happened then?

A. About that time the car that I saw go around the block had circled back around. And I said, "There they are. Those are the people that are trying to kill me."

He took the barrel of the action portion of the rifle and he went outside. And as he was walking outside, the car slowed. It stopped. And Tammy Carpenter who was the

Maloney's Appendix Page 579
Britton's Direct Questioning by Court – Day 3, Page 32

passenger in the car got out. And I could observe her having
a conversation with Detective Dooley.

Q. All right. And then what happened, sir?
A. I was up there for maybe 45 minutes is what I remember. I
was trying to convince them to give me my rifle back and let
me leave. They indicated to me that they were concerned that
it might be an illegal firearm. And I says, No, no, no, I
have an FID card. I explained to them the rules as it relates
to rifles.
MR. BOYLE: I object to "they," Your Honor.
THE COURT: Pardon?
MR. BOYLE: I think it's beyond the scope of the
question. He was talking about "they."
BY THE COURT:
Q. This is now on the second floor. Who are the people you
were talking to on the second floor?
A. It was Detective Maloney.
Q. Yes.

Maloney's Appendix Page 580
Britton's Direct Questioning by Court – Day 3, Page 33

A. There were some other officers up there. I don't know
their names.
Q. All right. And what did you explain to them?
A. That the legal requirements for a rifle turned on the
barrel length being16 inches or longer. That is, it didn't
matter if it had a stock or not. And that was an FID card, I
was legal as long as the rifle was unloaded. And the rifle
was unloaded.

Q. Okay.

Maloney's Appendix Page 581
Britton's Direct Questioning by Court – Day 3, Page 34

You had shown the police officers your FID card at this time?
A. I think I had, Your Honor, because I remember going through the legal spiel. And then they asked me where is the clip. And I am pretty sure at this time they had also gotten the FID card.
Q. All right. What happened next?
A. They told me to quit moving around so much, because I kept going to the window so I could see down into the street what was happening. A discussion --

THE COURT: All right.
A. And the discussion continued. Eventually they told me they were going to keep the rifle. And I --
MR. BOYLE: Objection.
Q. Who is the "they" that told you they would keep the rifle?
A. Detective Dooley told me that.

Maloney's Appendix Page 582
Britton's Direct Questioning by Court – Day 3, Page 35

Q. All right.
A. And I believe Detective Maloney seconded the motion but, in any case, he was in agreement.
Q. All right.
A. I asked him why. And the discussion continued for a few more minutes and I tried to convince him otherwise. To no avail. The decision was made, we're going to keep the rifle, there's nothing I could do about it.
So then I said all right. Can you give me something that shows you have my rifle. Eventually they gave me a copy of the police report that Detective Dooley had just completed.
And I looked at the police report. And nothing on the police report said that they had my rifle. Well, they said nothing said that they kept my rifle. I think it said rifle taken from me or something. I don't recall exactly as I stand here now.
So then I asked them can you write something on there that says you have my rifle. So then he wrote the words "rifle held for safekeeping." And I says, well, anybody could have written that it after the fact. And he initialled that and it was in blue ink and that's on Joint Exhibit1.
So then I left.

Maloney's Appendix Page 593
Britton's Direct Questioning by Court – Day 3, Page 46

The question, "Was there any other charge besides assault with a deadly weapon in Stampley and Carpenter's complaint," you have Joint Exhibit 4 which you will have in the jury room. Both parties agree that I can tell you that the charges were assault by means of a dangerous weapon, gun, assault Tyrone Stampley, in violation of G.L.265, Section 15B. Second count, assault by means of dangerous weapon, gun, assault Tammy Carpenter, in violation of the same statute.

So there are two counts of assault by means of a dangerous weapon. One is against Tyrone Stampley and the other is against Tammy Carpenter. And you will have both of these.

With respect to the other question, Mr. Britton, where was your five-year old child between 5:20 and 6:15?

MR. BRITTON: She was with me at all times.

THE COURT: Okay.

EXAMINATION, (Cont'd.)

BY THE COURT:

Q. Now, Mr. Britton, directing your attention to the end of the day June 30,1990, you went home I take it; is that right?

A. Yes, ma'am.

Q. What's the next thing that happened with relevance to this

Maloney's Appendix Page 594
Britton's Direct Questioning by Court – Day 3, Page 47

case?
A. After I got home, I thought about what had happened and it
bothered me. So I decided to complain.
Q. And what did you do?
A. I picked up the phone and I called police headquarters.
Q. Who did you speak with?
A. Initially I spoke with Sergeant Norman Connor.
Q. And then what happened?
A. He gave me the number to the drug control unit.
Q. Okay. And who did you call?
A. I called the drug control unit and Sergeant Detective Patrick J. Maloney answered the phone.
Q. He identified himself as Patrick Maloney?
A. Yes, Your Honor.
Q. And then what happened?
A. I explained to him that I wanted my rifle back and I hoped
I wasn't going to have to sue him to get it back.
Q. And then what happened?
A. He says, well, you know, do what you got to do. I --
Q. When did you make this call?
A. It was approximately an hour or so after I left, so maybe
eight o'clock.
Q. Okay. Then what happened?
A. The result of the phone call, nothing happened.
Q. All right. What's the next thing you did?

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A. This was on a Saturday night. So I stewed over it, stewed about it over the weekend. And on Monday morning I went down to ballistics to try to get my rifle back.
Q. Monday morning is what day?
A. I think January -- July2nd.
Q. All right. Monday morning, what time?
A. I don't recall the time.
Q. Okay. And so where did you go?
A. The ballistics unit for the Boston Police Department is at 7 Warren Avenue. And it's up on the second floor. And 7 Warren Avenue is also Area D's police station.
Q. What did you do?
A. I went into the police station. I told them what I wanted to do. And they allowed me to go up to ballistics. It's a secure building so you have to get permission, tell them why you're there, what you're doing.
I went upstairs and I spoke with someone, I don't know who. And I asked for my rifle back. And they said there was no rifle --
MR. BOYLE: Objection.
THE COURT: Overruled.
A. And they said there was no rifle there for me.
Q. And then what happened?
A. I left.
Q. And what's the next thing that happened with relevance to

this case?
A. The following day I went back.
Q. That would be June -- July 3rd?
A. Yes, ma'am.
Q. You went back where?
A. To 7 Warren Avenue, the Area D police station, to the
second floor ballistics.
Q. All right.
A. And this time there was a Mark D. Lawless that was present. And I asked him for my rifle back. And he said
there's no rifle here --
(Mr. Boyle stood.)
THE COURT: I'm going to sustain the objection.
Q. Just in terms of what you said, sir, did you get your rifle back on that occasion?
A. No, ma'am, I did not.
Q. Okay. What happened next?
A. I then -- I then asked him, Well, what are the procedures
to get my rifle back.
Q. What did you do next?
A. I left there and I went to police headquarters at154 Berkeley Street. That's only maybe half a mile or so away.
And I went in to see Deputy Superintendent Wood, a defendant
in this case.
Q. And then what happened?

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Britton's Direct Questioning by Court – Day 3, Page 50

A. Again, I had to tell the person at the front desk what I was there for and what I wanted. He got on the phone and called upstairs. And after a brief pause he told me that --

Q. Not in terms of what he told you but what did you do next?

A. I waited for Deputy Wood to come down.

Q. And this is, again, what date? July 4 is this?

A. This is July 3.

Q. July 3, okay.

And at some point did Officer Wood come down?

A. Yes, ma'am, he did.

Q. Okay. And what did you tell him?

A. I told him what had occurred on June 30,1990. I told him that my rifle was taken from me. I told him I thought it violated the Fourth Amendment. I told him that my rights had been violated and I wanted him to do something about it.

Q. What happened next?

A. He really didn't care.

Q. No, no, sir.

You had a conversation with Mr. Wood, with Officer Wood?

A. Yes, Your Honor.

Q. And did you have a conversation with anyone else in the building at that time?

A. Deputy Sergeant -- Detective Sergeant Patrick J. Maloney walked into the building from the outside while I was talking

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Britton's Direct Questioning by Court – Day 3, Page 51

to Deputy Superintendent Wood.
Q. And what part of the conversation was he present for?
What part of your conversation was he present for? What were
you saying when he was there?
A. I don't recall exactly where in the conversation. I would
say about the last third of the conversation with Deputy Wood
he was there for.
Q. Was he present during the time that you indicated that you
thought your rights were violated?
A. Yes, ma'am, he was, because when he came in, I reiterated
everything because Deputy Superintendent Wood wasn't hearing
what I was saying.
Q. So what did you say?
A. I said, "Here's the guy right here." And I reiterated
everything because I wanted to give him a chance to confirm or
deny what I was saying.
Q. And then what happened?
A. Maloney says, instead of confirming or denying what I
said, he says, Well, I got criminal charges against this man.
Q. Then what happened?
A. I was taken aback.

A. I was flabbergasted. I said, "For what?" And Maloney
says, "Those people that were chasing you said you pointed a

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Britton's Direct Questioning by Court – Day 3, Page 52

gun at them."
Q. And what did you say?
A. I said, "No way."
Q. And then what happened?
A. Well, at this point I could see which way this thing was going.
Q. What time did you have this conversation with Officer Wood and Officer Maloney?
A. The time that -- I remember very clearly that the conversation ended at12:15 on July 3. I made a note to myself. And I remember very clearly that my conversation with the ballistics unit with Mark Lawless occurred at11:37.
Q. I'm sorry. Say that again. The conversation with Maloney ended when?
A.12:15, fifteen minutes after, toward the afternoon.
Q. Then what happened, sir?
A. I left. And I went -- I don't recall where I went. But I just waited and eventually a summons appeared in the mail to come to court.
Q. Did you have to appear in court at some point?
A. Yes, ma'am, I did.
Q. When was the first time that you appeared in court?
A. I want to say August 3,1990. I remember that the complaint had a 30-day return. And my belief is that August 3,1990 is the day I had to go to court.

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Britton's Direct Questioning by Court – Day 3, Page 53

There are documents that can be exact on that. I'm going from memory.
Q. August 3,1990. And were you arraigned on that date?
A. Yes, ma'am, I was.
Q. And were you arraigned on charges of assault by means of a dangerous weapon, Tyrone Stampley and Tammy Carpenter?
A. Yes, ma'am, I was.
Q. And what did you plead?
A. Not guilty.
Q. Okay. And then what happened?
A. I was appointed a court attorney, an attorney because I was indigent at the time. And then I met with my attorney after the arraignment. My attorney just basically said I will speak to you --
MR. BOYLE: Objection.
Q. No, you met with the attorney after the arraignment. When was the next time you appeared in court, sir?
A. August 30,1990.
Q. August 30,1990. What happened then?
A. That was a motion hearing. And we had asked for certain discovery. We asked for a bill of particulars and we asked for the dates of birth and the criminal records of their alleged defendants -- alleged witnesses which would be Tyrone Stampley and Tammy Loughlin.
Q. All right.

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UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS

Civil Action No. 93-11430-NG.

RANDY BRITTON,

Plaintiff,

v.

PATRICK J. MALONEY,

Defendant.

BEFORE THE HONORABLE NANCY GERTNER
UNITED STATES DISTRICT JUDGE
DAY FOUR AFTERNOON SESSION
JURY TRIAL

APPEARANCES
RANDY BRITTON, PRO SE
for the plaintiffs
By: Randy Britton, Pro Se

CITY OF BOSTON LAW DEPARTMENT
For the defendants
By: Robert J. Boyle, Jr., Esq.
Andrea W. McCarthy, Esq.

Courtroom No. 4
USPO & Courthouse
Boston, Massachusetts 02109
February 6,1997
2:10 p.m.

Carol L. Scott, CSR, RPR, CM
Official Court Reporter
Boston, Massachusetts

Maloney's Appendix Page 811
Springer-Glenn's Direct by Boyle – Day 4, Page 27

MR. BOYLE: Your Honor, the defendants wish to call Sandra Springer to the stand.
THE COURT: All right. Ms. Springer.
SANDRA SPRINGER GLENN, Sworn
DIRECT EXAMINATION
BY MR. BOYLE:
Q. Good afternoon. Could you state your name, please?
A. Sandra Springer Glenn.
Q. Where are you employed?
A. Boston Police Department.

Maloney's Appendix Page 813
Springer-Glenn's Direct by Boyle – Day 4, Page 29

Q. Can you tell the jury what you recall, how you first noticed Mr. Britton? Go ahead.
A. Okay. I was assigned there on overtime basis from four o'clock till11:45 at the front door.
Actually I'm trying to recall the time. I was sitting at the front desk, which has an alarm or an emergency button. And at the time I turned to do something else. When I turned back, there was a man standing there, standing there with a rifle in his hand. I stood and I looked at him and he looked at me.
I was unarmed at the time. And I'm just frozen standing looking at this man. I'm pushing the emergency button and waiting for somebody to respond.
And when the two detectives came from the outside, secured the weapon and the individual, and at that time I was

Maloney's Appendix Page 814
Springer-Glenn's Direct by Boyle – Day 4, Page 30

kind of upset and jumpy. The phone rang. It was the upstairs who was supposed to respond to my emergency when I pushed the alarm button. They wanted to know if I knew that my button was going off. And I said yes, I do, I have an emergency down here.

Q. Do you remember who -- do you remember how the rifle -- was the rifle taken from Mr. Britton?
A. Yes, sir.

Maloney's Appendix Page 815
Springer-Glenn's Direct by Boyle – Day 4, Page 31

Q. Do you remember how that was accomplished?
A. Like I said, two detectives happened to come in from the outside.
Q. Do you recognize anybody in the courtroom as being those two detectives?
A. Yes.
Q. Who would those two people be?
A. Detective Maloney and, I'm sorry, I'm bad on names right now.
Q. The other guy?
A. Yes.
Q. Edward Dooley?
A. Yes.
Q. That's Edward Dooley, Detective Edward Dooley?
A. Yes.
Q. Do you know which of those officers was the one who --
A. Originally grabbed the rifle?
Q. Yes.
A. No, sir, all I remember is them taking it.
Q. Did you have any conversations with Mr. Britton that you can relate to us today?
A. No, sir.

Maloney's Appendix Page 818
Springer-Glenn's Cross by Britton--Day 4, Page 34

Q. Didn't you say at your deposition that the gun was never pointed at you?
MR. BOYLE: Objection.
THE COURT: She's accepted that. Your answer is what?
THE WITNESS: No, he asked me that question before and I said no.
MR. BOYLE: I think she's entitled to look at the testimony if she's going to answer that question.
THE COURT: Do you have that testimony, Mr. Britton?
MR. BRITTON: Your Honor, I don't have it pinpointed.
THE COURT: All right. Then --
MR. BRITTON: But she adopted it so --
THE COURT: She did not adopt it. She said -- did you say at your deposition that the gun was never pointed at you?
THE WITNESS: Yes, ma'am.
THE COURT: Oh, you did. All right. Go on.

APPENDIX E – MEMORANDUM AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS FILED ON OCTOBER 3, 1997

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS

Civil Action No. 93-11430-NG.

RANDY BRITTON,

Plaintiff,

v.

PATRICK J. MALONEY,

Defendant.

MEMORANDUM AND ORDER RE: PREJUDGMENT INTEREST, COSTS, AND ATTORNEYS' FEES

October 3, 1997

* * *

GERTNER, *District Judge:*

Plaintiff has filed a Motion to Alter or Amend the Judgment to add prejudgment interests, costs, attorney's fees and a $300,000 Additur.

The Motion for Attorneys fees is **DENIED**. The [plaintiff] is *pro se*. He did not incur the expense of an attorney. The motion for additur is **DENIED**. Information with respect to Britton's employment was properly excluded. There is no basis, no justification, for any adjustment to the jury's considered determination.

The motion for Prejudgment Interest is **ALLOWED** under the authority of *Foley v. City of Lowell*, 948 F.2d 10, 17 (1st Cir. 1991). In *Foley*, the court held that if parallel claims are brought under both federal and state laws, and the damages have not been segregated into separate federal and state components, a prevailing plaintiff is entitled to the "undiminished fruits of his state law victory." These fruits, as the Court noted, constitute the prejudgment interest under G.L. c. 231 section 6 (B) from the date of the filing of the case, June 29, 1993, to the instant date.

I reject defendant's argument that the plaintiff did not prevail on his state law claims. The jury found Maloney liable on his state malicious prosecution, abuse of process and civil rights claims. While they awarded zero damages on these claims, it is plain that they did so in response to the Court's instructions:

> The Plaintiffs is not entitled to a double recovery. Therefore if you award the Mr. Britton damages for the constitutional claims you may not award any more damages under the common law claims.

The damages were not segregated as between the federal and state claims. The verdict form required the jury to address the federal civil rights claim first; they did, awarding $200,000 in damages. When they then turned to the state claims, the instructions admonished them that they "may not award any more damages under the common law claims."

The case fits directly under the rule of Foley. The clerk is hereby instructed to enter judgment, including statutory prejudgment interest beginning June 29, 1993, to October 1, 1997.

In addition, Britton has filed for costs, including the motion within his summary motion (Plaintiffs' Motion to Alter or Amend the Attached February 27, 1997 judgment to (1)

add prejudgment interest, (2) add costs, (3) add attorney's fees and (4) add a $300,000 additur.) Pursuant to Rule 54(d), the prevailing party is entitled to his or her costs. The procedure is for the plaintiff to submit a bill of costs, for the Court to determine costs, and for the defendant to challenge such costs within five days of that determination. An order re: costs accompanies this memorandum.

SO ORDERED.

Dated: October 3, 1997

/s/ Nancy Gertner
NANCY GERTNER, U.S.D.J.

APPENDIX F – EXCERPTS FROM THE AMENDED COMPLAINT FILED ON OCTOBER 27, 1993

44. As was my policy at the time, I took steps to report the abusive situation. First I called the Sergeant in charge of Operations that night, Sgt Norman Connor. Connor gave me the Drug Control Unit's phone number. I called and MALONEY answered the phone. I told him that he had illegally seized my rifle in violation of the 4th amendment, and that I hoped I wasn't going to have to sue him to get my rifle back. The call was recorded as most police lines are recorded. MALONEY never said that he was justified in taking the weapon because he was investigating felony assault charges. We ended up very angry at each other. MALONEY didn't budge.

115. DONOHOE is liable because he conspired with MALONEY to produce a false incident report. DONOHOE signed an undated incident report with a missing first page. MALONEY and DONOHOE's false police report states:

> "Additional info Aforementioned Tyrone Stampley & Tammy Carpenter stated to Officers That The suspect pointed his rifle out of his auto window at The victims in a threatening manner. Allegations were made to Det. DOOLEY & Sgt. MALONEY on 6/30/90."

116. DONOHOE signed the report as MALONEY's Duty Supervisor despite the fact that WOOD was MALONEY's Supervisor.

117. This report is being held out by the BPD Headquarters as the only police report concerning the 30 Jun 1990 incident. The original police report, signed and completed by DOOLEY, was not turned-in to BPD Headquarters as required by BPD policy. MALONEY and DONOHOE's false police report was substituted for it. However DOOLEY's report was

turned-in the BPD Ballistics Unit on 5 July 1990 along with the Plaintiff's rifle.

118. Both DOOLEY's report and the false MALONEY-DONOHOE report purport to be originals and both reports use the same Criminal Complaint Number, 01564859.

119. DOOLEY's one page report is located in the BPD Ballistics Unit under BU Case # 900749 and CC# 01564859 as an original report with page 1 of 1 in the upper right hand corner.

120. The MALONEY-DONOHOE report is located in BPD Headquarters as the original report for CC# 01564859. The MALONEY-DONOHOE report has page 1 of 1 in the upper right hand corner, but the words no original has been handwritten above that and the check in the supplemental block has been scratched out and an X has been put in the original box.

121. On 3 Feb 1993, Plaintiff obtained a copy of the MALONEY-DONOHOE report upon which, Ethel Finnegan, Head of Police Reports at BPD Headquarters, certified that the "[MALONEY-DONOHOE report] is an original report." A copy of this report is at Exhibit 11 which is incorporated herein by reference.

122. On 3 Feb 1993, Finnegan told the me that the people in the police report records section are not authorized to change anything on the reports, which creates the inference that either MALONEY or DONOHOE made the changes.

123. On 29 April 1993, I obtained a second copy of the MALONEY-DONOHOE report which Finnegan notarized as a true copy. A copy of this report is at Exhibit 8 which is incorporated herein by reference.

124. All of this flies in the face of the reports that were submitted at my arraignment. At my arraignment, both reports were submitted with DOOLEY's report serving as the original and the MALONEY-DONOHOE report serving as a supplementary report. These reports are at Exhibit 10 which is incorporated herein by reference. However, the top of the DOOLEY report submitted at the arraignment said page 1 of 3 in the top margin, and the MALONEY-DONOHOE report said page 2 of 3 in the top margin. No page 3 of 3 was ever submitted or uncovered by me. **There was no third page because there is plenty of room left at the bottom of the second page**--the MALONEY-DONOHOE page 2 of 3. This lurking third page was a threat to Plaintiff that additional unfounded felony charges could and would be filed against the Plaintiff to keep the Plaintiff under control and to cause the Plaintiff to give up his right to **redress in the courts**. MALONEY and DOOLEY appeared at every court appearance, including the initial arraignment, to immediately counter anything that the Plaintiff may have said. This threat and the fact that documents to prove Plaintiff's case, namely the BPD form 2419, could be altered at will by the police caused the Plaintiff to delay bringing this civil suit. The various versions of these police reports in their various combinations give rise to Plaintiff's term "Musical Police Reports." At least four versions can be constructed: (1) the DOOLEY report as an original, (2) the MALONEY-DONOHOE report as an original, (3) the DOOLEY report as an original with the MALONEY-DONOHOE report serving as a supplementary, and finally (4) the DOOLEY report as an original with the MALONEY-DONOHOE report serving as a supplementary with page 3 of 3 serving as a supplement to the supplement.

132. THE CITY is liable because its unconstitutional policies caused the police misconduct and deprivation of constitutional rights visited upon the Plaintiff. The BPD is a department of THE CITY. BPD Rule 311 is an official written BPD

policy. BPD Rule 311 is unconstitutional on its face to the extent it requires the seizure, retention, and turn-in to the ballistic unit, of every firearm[1], rifle, or shotgun that comes into the possession of a Boston Police Officer, **100%** of the time--no matter what. Under Rule 311, it is immaterial how or why the weapon comes into the possession of the Police Officer. The how and why, however, is essential to a judicial determination of reasonableness for 4th amendment purposes. Rule 311 makes no allowance or exception for the mistaken or unreasonable seizure of a weapon from a law abiding citizen in legal possession of the weapon when the circumstances do not give rise to probable cause to believe that a crime has been or is about to be committed. Under Rule 311, if the weapon comes into the possession of a Boston Police Officer, while on duty, by whatever means, it **must** be turned-in to the ballistics unit, no questions asked. In fact, an officer could be held liable for violating Rule 311 if he returned a weapon to a licensed individual without first turning the weapon into ballistics. A copy of BPD Rule 311 is at Exhibit 2 which is incorporated herein by reference.

133. Rule 311 is only constitutional when the seizure is reasonable under the 4th, 5th and 14th Amendments. But Rule 311 does not take effect secondary to a reasonable seizure, it takes effect secondary to **any** seizure. Even if an initial stop and frisk is proper[2] and a rifle is recovered, it does not fol-

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[1]As defined by Massachusetts G.L.c. 140 §121.

[2]Plaintiff is aware that police can say almost anything to justify a frisk, such as I feared for my safety or that of others. Plaintiff, however, states that a black man, wearing his Field Operations Supervisor badge for the 1990 Census, with his 5 year old daughter, with a rifle, who has come to the police station for safety and assistance, and who has already calmly and coolly made those facts known to the officer at the desk of the BPD Headquarters, and who exhibits a calm, cool, and collected demeanor, is not inherently dangerous so as to justify a frisk and seizure of his rifle. It is stereotypical and racially discriminatory to hold otherwise. Officer

low that it is reasonable to keep the rifle taken from a properly licensed individual--absent probable cause to believe that the licensed individual has committed a crime. To take and keep the rifle under the circumstances of this case, to test fire the rifle at the ballistics unit, and to compare the bullet obtained therefrom to all past and future bullets recovered from unsolved shooting incidents, unconstitutionally deprives the Plaintiff of his 4th Amendment right against unreasonable searches and seizures and his fifth amendment right to due process because the Plaintiff has a property right in the rifle and FID card conferred upon the Plaintiff by Massachusetts G.L.c. 140 §129B and that property right is protected by the 14th Amendment.

134. The only mention in Rule 311 to the legality or constitutionality of the taking a weapon from a properly licensed individual is contained in Section 8 which Plaintiff sets out below in its entirety. BPD Rule 311 is at Exhibit 2 which is incorporated herein by reference.

> **Sec. 8 Licensed Individuals carry Firearms:** From time to time, police officers find it necessary to remove a firearm from the possession of an individual properly licensed to carry a weapon, e.g. a properly licensed individual being armed with a firearm is taken into custody because he is incapacitated through the use of alcoholic beverages, or if the properly licensed individual displays a firearm and threatens another person[3], etc.
>
> In all such incidents, regardless of whether or not an arrest is made, an Incident Report, B.P.D. Form 1.1, must be submitted. Commanding Officers are re-

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Springer told DOOLEY that the Plaintiff was there seeking assistance and safety and was a victim and not an assailant.

[3] I believe that this sentence sparked MALONEY to perjure himself.

minded that it is their responsibility to clearly recommend on the Form 1.1 whether or not action should be taken against the firearm owner's license to carry firearms.

On some occasions, this Department has received correspondence requesting the return of such firearms to properly licensed individuals. Such a request is then forwarded to the Area or Unit concerned for processing. **Commanding Officers are expected to comment on the suitability of the licensee to continue to possess a license to carry firearms. Although the Department does not have the right to withhold a firearm, unless so ordered by the court, the Department does have control over licenses to carry issued by the Police Commissioner.** Our Department can also request appropriate action to be taken by other issuing authorities.

Request for the return of firearms taken into custody by Department personnel must be taken to the Police Commissioner. **The Ballistics Unit will only return firearms to the owner, or other authorized person, upon receipt of a memo to that effect from the Police Commissioner.**

135. But suitability to carry firearms as mentioned in Rule 311 sec. 8 above, can only properly affect firearms[4] issued under §131[5] et. al. A citizen has no property right in an ini-

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[4]As defined by Massachusetts G.L.c. 140 §121.

[5] There is no right under art. 17 of the Declaration of Rights of the Massachusetts Constitution for a private citizen to keep and bear arms and thus to require that a citizen have a license to do so is not unconstitutional. Commonwealth v. Davis, 369 Mass. 886 [1976]); nor is there any question of a property right or deprivation of liberty involved in the statutory procedures for obtaining a license to carry firearms. Chief of Police of Shelbourne v. Moyer 16 Mass. App. Ct. 543, 547 (1983).

tial license to carry a firearm[6] and the license to carry a firearm[7] can be revoked at any time that the police decide the licensee is unsuitable. The police, however, have no such power or authority with respect to FID cards, or rifles issued pursuant to Massachusetts G.L.c. 140 §129B. The framers of BPD Rule 311 made a fatal error when they lumped all weapons into the firearms category in Sec 1 of Rule 311 which states:

> **Sec. 1 Definitions.** For the purposes of this rule, the word "firearm" shall mean "firearm" as described in Massachusetts General law, Chapter 140, Sec 121 (pistols, revolvers, certain shotguns, air pistols, and machine guns), **and** rifles, shotguns, BB guns, or other air rifles, or improvised weapons capable of discharging a bullet or shot, or toy-guns, replicas or starter pistols.

136. This definition in section 1 of Rule 311 adds to the confusion of an already improperly trained police force in general, and Drug Control Unit in particular. BPD Rule 311 is at Exhibit 2 which is incorporated herein by reference.

137. BPD Rule 311 caused MALONEY, DOOLEY, and their co-conspirators to violate Plaintiff's constitutional rights by taking his rifle and turning it into the BPD ballistics unit. If the illegal seizure of the rifle had not occurred pursuant to Rule 311, Plaintiff would not have complained to MALONEY and WOOD that his constitutional rights had been violated. If the Plaintiff had not stood up for himself and threaten the instant civil lawsuit to vindicate his constitutional rights, then MALONEY would not have brought false felony charges against the Plaintiff to , inter alia, protect himself from a civil lawsuit. MALONEY's theory would be

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[6]As defined by Massachusetts G.L.c. 140 §121.

[7]As defined by Massachusetts G.L.c. 140 §121.

that the rifle was confiscated pursuant to an investigation around these felony charges. But the timing of events, the "musical" police reports[8], the BPD form 2419, the ballistics records, the violation of BPD rules and procedures, and the direct and sworn affidavit of Tyrome Stampley, one of the alleged victims, renders MALONEY's position hopelessly uncredible.

151. The need for training on firearms identification is obvious in the BPD Drug Control unit because it is common knowledge that Guns and Drugs are often found together. See the quotation below:

> In City of Canton, Ohio v. Harris et. al. 489 U.S. 378, 390 (1989), the United States Supreme Court said "It may seem contrary to common sense to assert that a municipality will actually have a policy of not taking reasonable steps to train its employees. But it may happen that in light of the duties assigned to specific officers or employees the need for more or different training is so obvious, and the inadequacy so likely to result in the violation of constitutional rights, that the policymakers of the city can reasonably be said to have been deliberately indifferent to the need. In that event, the failure to provide proper training may fairly be said to represent a policy for which the city is responsible, and for which the city may be held liable if it actually causes injury."

152. Since the Plaintiff's rifle seizure continued after a whole squad of Drug Control Unit officers failed to identify the Plaintiff's rifle as a rifle and not a firearm[9], the Plaintiff suffered a violation of his constitutional rights because he was

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[8]There are at least three different versions of BPD Incident Report # 01564859, attached to this complaint.

[9]As defined by Massachusetts G.L.c. 140 §121.

surrounded by incompetent police officers. It is hard for the Plaintiff to say whether the police officers really did not know that the rifle was a rifle or whether they didn't know that the Plaintiff had a property right in his FID Card and his rifle which would render them liable for intentionally seizing his rifle. In either case, its clear they thought that they would get away with it.

153. The primary reason that this civil action is filed so late in the three year statue of limitation time period is that the Plaintiff was so intimidated that he was not going to file at all. Plaintiff was convinced that the system was corrupt, from the Mayor on down to the beat cop. Even when the Plaintiff complained to the State Attorney General's Office, he received a letter signed by a paralegal in the Civil Rights Division dated 24 April 1990[10], that said that there was nothing they could do. The letter, which is at Exhibit 5 and incorporated herein by reference, said:

> "Our office usually refers police complaints to the Internal Affairs Unit of the police department against which the complaint is made. It seems that you have already done so. If you are not satisfied with the out-

[10]In preparation for this civil suit the Plaintiff discovered a letter dated 31 May 1990 signed by Marjorie, Heins, Chief, Civil Rights Division, to Superintendent Joseph Saia. The 8 page letter described 56 incidents in which young black males were illegally stopped, searched, and in some cases arrested. The letter asked for "all documentation relating to the incidents, including incident reports, arrest reports where applicable, copies of citations or complaints, copies of radio transmissions tapes, log entries, and photographs." Plaintiff had mixed emotions upon this discovery because apparently the Civil Rights Division eventually got enough complaints to do something about it, but it appears that because the Plaintiff had already taken the initiative and filed an Internal Affairs complaint he was excluded from the list. This raises the question of how many other cases were not investigated by the State Attorney General because the complainant had already filed an IAD complaint.

come, you may want to consult a private attorney about the possibility of a civil suit."

154. MALONEY could and did do any thing he wanted to the Plaintiff with impunity. Plaintiff feared, and still fears, that he would be retaliated against for filing the instant civil suit. Plaintiff feared that the critical documents in police custody, which are necessary to make his case, would be forged, changed, or come up missing. MALONEY and his co-conspirators' actions in filing false police reports and in bringing false felony charges against the Plaintiff were designed to deprive the Plaintiff of his constitutional right to **redress in the courts** by threats, coercion and intimidation. Plaintiff feared that he may not get a fair civil trial because of MALONEY's demonstrated ability to get a summons and complaint issued against him in a criminal trial based on unsubstantiated and uncorroborated hearsay evidence which MALONEY personally fabricated. MALONEY made it clear that he was not to be messed with. MALONEY and his co-conspirators intentionally inflicted emotional distress on the Plaintiff by their actions.

166. By their actions and omissions the Defendant officers deprived the Plaintiff of his rights under 5th and 14th Amendments of the United States Constitution and article 12 of the Massachusetts Declaration of Rights not to be deprived of property except by due process of law.

167. By their conduct and conspiracy, the Defendant officers deprived and conspired to deprive the Plaintiff of his rights under the 14th Amendment of the United States Constitution and article 12 of the Massachusetts Declaration of Rights to due process and **equal protection of the law**.

176. As a direct and proximate cause of the aforementioned policies, usages, and customs of the Defendants ROACHE, FLYNN, and THE CITY, the Defendant officers violated the

Plaintiff's civil rights under the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution and article 12 and 14 of the Massachusetts Declaration of Rights.

178. Prior to July 1, 1990, the Defendants ROACHE, FLYNN, and THE CITY maintained and practiced policies or customs that caused the Defendant officers:

i. to illegally search and seize the Plaintiff, his rifle, his ammunition, and his car registration;

ii. to illegally interfere and to conspire to interfere with the Plaintiff's right to seek **redress in the courts**;

iii. to deny and conspire to deny the Plaintiff the **equal protection of the law** and due process.

193. MALONEY, DOOLEY, and their co-conspirators are liable because they malicious prosecuted the Plaintiff without probable cause to believe that the charges were true. The malicious prosecution was designed to threaten, intimidate, and coerce the Plaintiff into to giving up his right to **redress in the courts**.

224. Any limitations of actions problem is cured because of the overt actions of the defendants in this case which were calculated to deprive BRITTON of his right to redress in the courts by threats, intimidation, and coercion. To dismiss this count based on the 1 year statue of limitation is tantamount to rewarding the defendants for their own misbehavior.